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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 DOUGLAS LAMBERT, dba DOUGLAS
12 LAMBERT INSURANCE SERVICES, an
13 individual,

14 Plaintiff,

15 v.

16 P/V SAMURAI, Official No. 603902, AND ALL
17 OF HER ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTEANCES, *in rem*, and JAN KIRK, *in*
personam, KAREN KIRK, *in personam*, THE
18 JAN AND KAREN KIRK FAMILY TRUST, *in*
personam and PACIFIC OUTDOOR
ADVENTURES, INC, *in personam*,

19 Defendants.

20) Case No. **'11CV0712 DMS BGS**

21) IN ADMIRALTY

22) VERIFIED COMPLAINT *IN REM*
AND *IN PERSONAM* FOR
FORECLOSURE OF PREFERRED
SHIP'S MORTGAGE AND
DEFICIENCY JUDGMENT

23) F.R.C.P. Supplemental Admiralty
Rules C and E.

24) 46 U.S.C. Sections 30101-31343

25 Plaintiff alleges:

26 1. Plaintiff DOUGLAS LAMBERT, dba DOUGLAS LAMBERT INSURANCE
SERVICES is an individual residing in Santa Barbara, and doing business in Santa Barbara,
California.

27 2. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the
28 Federal Rules of Civil Procedure. This Honorable Court has admiralty jurisdiction both *in rem*

1 and *in personam* pursuant to 28 U.S.C. § 1333(1), federal question jurisdiction under 28 U.S.C.
 2 section 1331 and the Commercial Instruments and Federal Maritime Lien Act (former the Ship
 3 Mortgage Act), which is embodied at 46 U.S.C. sections 31301-31343.

4 3. United States Coast Guard records reflect that the Defendant Vessel P/V
 5 SAMURAI, Official No. 603902, (the “DEFENDANT VESSEL”), is a 1979 Kelly’s Enterprises
 6 inspected passenger vessel of 62.2 feet in length and 19.2 feet in beam, and is now afloat upon
 7 the navigable waters of the United States and within the jurisdiction of this Honorable Court.

8 4. On information and belief, PLAINTIFF alleges that Defendant JAN KIRK is an
 9 individual residing within San Diego County, California.

10 5. On information and belief, PLAINTIFF alleges that Defendant KAREN KIRK is
 11 an individual residing within San Diego, California.

12 6. On information and belief, PLAINTIFF alleges that Defendant JAN AND KAREN
 13 KIRK FAMILY TRUST is legal entity organized and existing in San Diego County, California.

14 7. On information and belief, PLAINTIFF alleges that Defendant Pacific Outdoor
 15 Adventures, Inc. is the documented owner of the DEFENDANT VESSEL.

16 8. On information and belief, PLAINTIFF alleges that California Secretary of State
 17 records reflect the status of Defendant PACIFIC OUTDOOR ADVENTURES, INC. as
 18 “SUSPENDED.”

19 9. On or about July 29, 2009, in order to secure an indebtedness justly due and owing
 20 to PLAINTIFF, Defendants JAN KIRK, KAREN KIRK, THE JAN AND KAREN KIRK
 21 FAMILY TRUST AND PACIFIC OUTDOOR ADVENTURES, INC. (collectively the “*IN
 22 PERSONAM* DEFENDANTS”) executed and delivered to PLAINTIFF a Promissory Note -
 23 Monthly Installments (the “Promissory Note”) in the principal amount of \$120,387.00, which
 24 required them jointly and severally, to tender 60 monthly installment payments, each in the
 25 amount of \$2,271.85, commencing the “first day of the calendar month immediately following
 26 the month of execution of [the] Promissory Note.

27 10. The Promissory Note provides that if default were to occur all remaining principal
 28 sums plus accrued interest would immediately upon demand be due and payable, and that if suit

1 were to be commenced to enforce the terms of the Promissory Note, the *IN PERSONAM*
 2 DEFENDANTS shall pay all associated attorneys' fees and costs. A true and correct copy of this
 3 Promissory Note is hereto attached as Exhibit A.

4 11. In order to secure an indebtedness justly due and owing to PLAINTIFF on account
 5 of the provision of insurance for the benefit of the DEFENDANT VESSEL and her owners
 6 Defendant JAN KIRK executed and delivered to PLAINTIFF, in his capacity as President of
 7 Defendant PACIFIC OUTDOOR ADVENTURES, INC. and in accordance with and pursuant
 8 to the Ship Mortgage Act of 1920, as amended, a Preferred Ship Mortgage covering the
 9 DEFENDANT VESSEL, and by the terms of that mortgage, assigned, pledged, mortgaged, set
 10 over and conveyed the DEFENDANT VESSEL, her engines, tackle, etc., to PLAINTIFF, in
 11 order to secure the payment of the Promissory Note described above, and all other obligations
 12 of the Preferred Ship Mortgage. A true and correct copy of this Preferred Ship Mortgage is
 13 attached hereto as Exhibit "B."

14 12. On information and belief, since the time she was first sold and at all times since
 15 the DEFENDANT VESSEL was, and has been, documented with the United States Coast Guard,
 16 and that her current hailing port is the Port of San Diego.

17 13. The above described Preferred Ship Mortgage was duly filed with the United
 18 States Coast Guard Vessel Documentation Center. The Preferred Ship Mortgage does not
 19 stipulate that the mortgagee waived its preferred status. All other requirements of the Ship
 20 Mortgage Act of 1920, as amended, were met or caused to be met, either by PLAINTIFF
 21 mortgagee or the United States Coast Guard Documentation Center. The mortgage debt is a
 22 valid preferred ship mortgage lien, and PLAINTIFF mortgagee is entitled to the priority
 23 accorded it as a matter of law.

24 14. PLAINTIFF made repeated requests and demands of Defendant JAN KIRK, the
 25 President of the corporate owner of the DEFENDANT VESSEL, for payment of sums due under
 26 the Promissory Note, which demands and requests, despite promises of payment, ultimately went
 27 unheeded.

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1 15. On March 23, 2011 PLAINTIFF's attorney wrote Defendant JAN KIRK a letter
 2 (dispatched via Certified and First Class U.S. Mail) in which demand was made for payment
 3 within five days of the sum then due under the Promissory Note (\$126,372.08), or alternatively
 4 that acceptable payment arrangements be in place within such period, and notifying Defendant
 5 JAN KIRK that if payment was not tendered or payment arrangements arrived at PLAINTIFF
 6 would file a vessel arrest action and seek an Order authorizing the arrest of the DEFENDANT
 7 VESSEL. Defendant JAN KIRK has not responded in any way to counsel's letter.

8 16. The *IN PERSONAM* DEFENDANTS have breached their agreements set forth in
 9 the Promissory Note described above and have refused or neglected to pay the indebtedness
 10 secured by the Preferred Ship Mortgage described above in accordance with its terms. They
 11 have defaulted in failing to pay any monthly installments of principal and interest due. There
 12 is presently (as of March 23, 2011) due and unpaid a sum of not less than \$126,372.08, including
 13 principal and interest calculated at five percent (5%) per annum, as provided for in the
 14 Promissory Note. Interest continues to accrue at the contractual rate of five percent (5%) per
 15 annum, as specified in the above referenced Promissory Note.

16 17. PLAINTIFF has incurred and will incur reasonable attorneys' fees, collection costs
 17 and expenses, and may be caused to make advances and sustain damages by reason of the
 18 defaults of the Defendants, all in amounts not presently ascertainable. PLAINTIFF will amend
 19 its pleadings to correctly allege the proper amounts when they become known.

20 **WHEREFORE**, PLAINTIFF prays:

21 1. That process in due form of law pursuant to this Court's Admiralty and Maritime
 22 Jurisdiction issue against the DEFENDANT VESSEL, her rigging, tackle, apparel, furniture,
 23 engines, bunkers, and all other necessaries thereunto appertaining and belonging, and that all
 24 persons claiming any interest in her be cited to appear and answer this Verified *in rem*
 25 Complaint; that Defendants JAN KIRK, KAREN KIRK, THE JAN AND KAREN KIRK
 26 FAMILY TRUST and PACIFIC OUTDOOR ADVENTURES, INC. be cited to appear and
 27 answer this Verified Complaint.

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1 2. That the Preferred Ship Mortgage be declared to be a valid and subsisting lien, as
 2 above described, in an amount of not less than \$126,372.08 (as of March 23, 2011), plus
 3 additionally accruing interest at the rate of five percent (5%) per annum, late charges and other
 4 contractually recoverable fees, and that PLAINTIFF recover said amounts, together with all
 5 other amounts which have been or are required to be disbursed by PLAINTIFF for the care,
 6 insuring, preservation, storage and mooring of DEFENDANT VESSEL during the pendency of
 7 this action, and all other advances, expenses, attorneys' fees, costs and disbursements by
 8 PLAINTIFF, together with post-judgment interest at the maximum statutory rate, with such lien
 9 declared to be prior and superior to the interest, maritime and non-maritime liens or claims of
 10 any and all persons, firms or corporations whatsoever which arose after the date the Preferred
 11 Ship Mortgage was filed with the United States Coast Guard Vessel Documentation Center;

12 3. That the DEFENDANT VESSEL, her rigging tackle, apparel, furniture, engines,
 13 bunkers, and all other necessities thereunto appertaining and belonging be condemned and sold
 14 to pay the demands and claims of PLAINTIFF, with interest and costs, and that PLAINTIFF may
 15 become a purchaser permitted to credit bid any amounts adjudged to be owing at any sale of the
 16 mortgaged property, if the Court determines PLAINTIFF's maritime lien is senior to all others;

17 4. That it be decreed that any and all persons, firms or corporations claiming any
 18 interest in the DEFENDANT VESSEL are forever barred and foreclosed of and from all right
 19 or equity of redemption or claim of, in, or to the mortgaged vessel and every part thereof;

20 5. That PLAINTIFF recover from Defendants JAN KIRK, KAREN KIRK, THE JAN
 21 AND KAREN KIRK FAMILY TRUST and PACIFIC OUTDOOR ADVENTURES, INC. The
 22 amount of any deficiency, including attorneys' fees, expenses and costs that may be due the
 23 PLAINTIFF after applying the proceeds of the sale of the mortgaged DEFENDANT VESSEL
 24 to the sums decreed as due under the Promissory Note and Preferred Ship Mortgage.

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1 6. That PLAINTIFF have such other and further relief as in justice it may be entitled
2 to receive.

3 April 1, 2011

Respectfully submitted,

4 BRODSKY, MICKLOW, BULL & WEISS

5 s/Philip E. Weiss

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7 Attorney for Plaintiff
8 E-mail: shiplaw@earthlink.net

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VERIFICATION

I, Douglas Lambert, declare under penalty of perjury under the laws of the United States and the State of California as follows:

1. I am the Plaintiff in this action. I am informed and believe that the matters stated in the above Verified Complaint are true and correct.

If called to testify as to the foregoing matters, I could and would competently so testify.

Executed this 5 day of April, 2010 at SAN DIEGO, California.

Douglas Lambert

